

AMENDED IN SENATE MAY 8, 2012  
AMENDED IN SENATE APRIL 17, 2012  
AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1395**

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**Introduced by Senator Rubio**

February 24, 2012

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An act to amend Section 6145 of the Business and Professions Code, to amend Section 94949 of the Education Code, to amend Sections 6254.14, 8543, 8543.1, 8543.2, 8543.4, 8544, 8544.2, 8544.3, 8544.5, 8544.6, 8545, 8545.1, 8546, 8546.4, 8546.8, 8546.10, 8547.2, 8548.4, and 54954.5 of the Government Code, to amend Section 130506 of the Health and Safety Code, to amend Section 1872.83 of the Insurance Code, to amend Section 5024 of the Penal Code, to amend Section 71560 of the Public Resources Code, to amend Section 421 of the Public Utilities Code, and to amend Section 80270 of the Water Code, relating to the State Auditor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1395, as amended, Rubio. State Auditor.

Existing law creates in state government the Bureau of State Audits under the direction of the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy. Existing law provides that the bureau is independent of the executive branch and legislative control.

This bill would rename the Bureau of State Audits as the State Auditor's Office. *The bill would prohibit any supplies, forms, insignias, signs, or logos from being destroyed or changed as a result of the name change and would require their continued use until exhausted or*

*unserviceable*. The bill would make nonsubstantive, conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6145 of the Business and Professions  
2 Code is amended to read:

3 6145. (a) The board shall engage the services of an independent  
4 national or regional public accounting firm with at least five years  
5 of experience in governmental auditing for an audit of its financial  
6 statement for each fiscal year. The financial statement shall be  
7 promptly certified under oath by the Treasurer of the State Bar,  
8 and a copy of the audit and financial statement shall be submitted  
9 within 120 days of the close of the fiscal year to the board, to the  
10 Chief Justice of the Supreme Court, and to the Assembly and  
11 Senate Committees on Judiciary.

12 The audit shall examine the receipts and expenditures of the  
13 State Bar and the State Bar sections to ensure that the receipts of  
14 the sections are being applied, and their expenditures are being  
15 made, in compliance with subdivision (a) of Section 6031.5, and  
16 that the receipts of the sections are applied only to the work of the  
17 sections.

18 The audit also shall examine the receipts and expenditures of  
19 the State Bar to ensure that the funds collected on behalf of the  
20 Conference of Delegates of California Bar Associations as the  
21 independent successor entity to the former Conference of Delegates  
22 of the State Bar are conveyed to that entity, that the State Bar has  
23 been paid or reimbursed for the full cost of any administrative and  
24 support services provided to the successor entity, including the  
25 collection of fees or donations on its behalf, and that no mandatory  
26 dues are being used to fund the activities of the successor entity.

27 In selecting the accounting firm, the board shall consider the  
28 value of continuity, along with the risk that continued long-term  
29 engagements of an accounting firm may affect the independence  
30 of that firm.

31 (b) The board shall contract with the State Auditor's Office to  
32 conduct a performance audit of the State Bar's operations from  
33 July 1, 2000, to December 31, 2000, inclusive. A copy of the

1 performance audit shall be submitted by May 1, 2001, to the board,  
2 to the Chief Justice of the Supreme Court, and to the Assembly  
3 and Senate Committees on Judiciary.

4 Every two years thereafter, the board shall contract with the  
5 State Auditor's Office to conduct a performance audit of the State  
6 Bar's operations for the respective fiscal year, commencing with  
7 January 1, 2002, to December 31, 2002, inclusive. A copy of the  
8 performance audit shall be submitted within 120 days of the close  
9 of the fiscal year for which the audit was performed to the board,  
10 to the Chief Justice of the Supreme Court, and to the Assembly  
11 and Senate Committees on Judiciary.

12 For the purposes of this subdivision, the State Auditor's Office  
13 may contract with a third party to conduct the performance audit.  
14 This subdivision is not intended to reduce the number of audits  
15 the State Auditor's Office may otherwise be able to conduct.

16 SEC. 2. Section 94949 of the Education Code is amended to  
17 read:

18 94949. (a) On or before October 1, 2013, the Legislative  
19 Analyst's Office shall report to the Legislature and the Governor  
20 on the appropriateness of the exemptions provided in this chapter,  
21 with particular attention to the exemptions provided by Article 4  
22 (commencing with Section 94874) that are based on accreditation.  
23 The report shall examine and make recommendations regarding  
24 the degree to which regional and national accrediting agencies  
25 provide oversight of institutions and protection of student interests,  
26 whether that oversight results in the same level of protection of  
27 students as provided by this chapter, and whether the exemptions  
28 provided in Article 4 (commencing with Section 94874) that are  
29 based on accreditation should be continued, adjusted, or removed.

30 (b) (1) On or before August 1, 2013, the bureau shall contract  
31 with the State Auditor's Office to conduct a performance audit to  
32 evaluate the effectiveness and efficiency of the bureau's operations,  
33 consistent with the requirements of this chapter, and the State  
34 Auditor's Office shall report the results of that audit to the  
35 Legislature and the Governor.

36 (2) The performance audit required by paragraph (1) shall  
37 include, but shall not be limited to, an evaluation of all of the  
38 following:

39 (A) The Student Tuition Recovery Fund, including the adequacy  
40 of its balance; the quality, timeliness, and consistency of claims

1 processing; and the degree to which it has been, or will be, able  
2 to reimburse tuition for students.

3 (B) The bureau's enforcement program, including the means  
4 by which the bureau makes students and school employees aware  
5 of their ability to file complaints; the average time for investigating  
6 complaints; the standards for referring complaints to investigation;  
7 the average time to complete investigations; the adequacy of the  
8 bureau's inspections; the bureau's record of imposing discipline;  
9 the bureau's record of initiating investigations based upon publicly  
10 available information; the bureau's record of coordinating with  
11 law enforcement and public prosecutors; and whether the bureau  
12 has the enforcement resources necessary to protect consumers and  
13 ensure a fair and prompt resolution of complaints and investigations  
14 for both students and institutions.

15 (C) The bureau's efforts with respect to, and extent of institution  
16 compliance with, the public and student disclosure requirements  
17 of this chapter.

18 (D) Whether the bureau's staffing level and expertise are  
19 sufficient to fulfill its statutory responsibilities.

20 (c) Bureau staff and management shall cooperate with the  
21 Legislative Analyst's Office and the State Auditor's Office and  
22 shall provide those agencies with access to data, case files,  
23 employees, and information as those agencies may, in their  
24 discretion, require for the purposes of this section.

25 SEC. 3. Section 6254.14 of the Government Code is amended  
26 to read:

27 6254.14. (a) (1) Except as provided in Sections 6254 and  
28 6254.7, nothing in this chapter shall be construed to require  
29 disclosure of records of the Department of Corrections and  
30 Rehabilitation that relate to health care services contract  
31 negotiations, and that reveal the deliberative processes, discussions,  
32 communications, or any other portion of the negotiations,  
33 including, but not limited to, records related to those negotiations  
34 such as meeting minutes, research, work product, theories, or  
35 strategy of the department, or its staff, or members of the California  
36 Medical Assistance Commission, or its staff, who act in  
37 consultation with, or on behalf of, the department.

38 (2) Except for the portion of a contract that contains the rates  
39 of payment, contracts for health services entered into by the  
40 Department of Corrections and Rehabilitation or the California

1 Medical Assistance Commission on or after July 1, 1993, shall be  
2 open to inspection one year after they are fully executed. In the  
3 event that a contract for health services that is entered into prior  
4 to July 1, 1993, is amended on or after July 1, 1993, the  
5 amendment, except for any portion containing rates of payment,  
6 shall be open to inspection one year after it is fully executed.

7 (3) Three years after a contract or amendment is open to  
8 inspection under this subdivision, the portion of the contract or  
9 amendment containing the rates of payment shall be open to  
10 inspection.

11 (4) Notwithstanding any other provision of law, including, but  
12 not limited to, Section 1060 of the Evidence Code, the entire  
13 contract or amendment shall be open to inspection by the Joint  
14 Legislative Audit Committee, the State Auditor's Office, and the  
15 Legislative Analyst's Office. The Joint Legislative Audit  
16 Committee, the State Auditor's Office, and the Legislative  
17 Analyst's Office shall maintain the confidentiality of the contracts  
18 and amendments until the contract or amendment is fully open to  
19 inspection by the public.

20 (5) It is the intent of the Legislature that confidentiality of health  
21 care provider contracts, and of the contracting process as provided  
22 in this subdivision, is intended to protect the competitive nature  
23 of the negotiation process, and shall not affect public access to  
24 other information relating to the delivery of health care services.

25 (b) The inspection authority and confidentiality requirements  
26 established in subdivisions (q), (v), and (y) of Section 6254 for  
27 the Legislative Audit Committee shall also apply to the State  
28 Auditor's Office and the Legislative Analyst's Office.

29 SEC. 4. Section 8543 of the Government Code is amended to  
30 read:

31 8543. (a) There is hereby created in state government the State  
32 Auditor's Office under the direction of the Milton Marks "Little  
33 Hoover" Commission on California State Government Organization  
34 and Economy. In order to be free of organizational impairments  
35 to independence, the office shall be independent of the executive  
36 branch and legislative control.

37 (b) Notwithstanding any other law, any reference to the "Bureau  
38 of State Audits" or "bureau" shall be deemed to refer to the "State  
39 Auditor's Office."

1 SEC. 5. Section 8543.1 of the Government Code is amended  
2 to read:

3 8543.1. The duties of the State Auditor's Office are to examine  
4 and report annually upon the financial statements prepared by the  
5 executive branch of the state and to perform other related  
6 assignments, including performance audits, that are mandated by  
7 statute. For the purposes of this chapter "office" means the "State  
8 Auditor's Office," unless the context clearly requires otherwise.

9 SEC. 6. Section 8543.2 of the Government Code is amended  
10 to read:

11 8543.2. (a) The head of the office is the State Auditor, who  
12 shall be appointed by the Governor from a list of three qualified  
13 individuals nominated by the Joint Legislative Audit Committee  
14 by a vote of at least a majority of the committee membership from  
15 each house of the Legislature. The term of any individual appointed  
16 as the State Auditor shall be four years. Any vacancy in the office  
17 shall be filled in the same manner provided by this subdivision for  
18 a full term.

19 (b) As the head of the office, the State Auditor may establish  
20 constituent parts of the office to carry out the powers and duties  
21 of the office unless otherwise specified by law.

22 (c) The office has a Chief Deputy State Auditor.

23 SEC. 7. Section 8543.4 of the Government Code is amended  
24 to read:

25 8543.4. In administering the fiscal policies of the State  
26 Auditor's Office, for each fiscal year, the office shall provide the  
27 Department of Finance with the office's proposed budget and the  
28 Department of Finance shall include that proposed budget in the  
29 Governor's Budget without modification.

30 SEC. 8. Section 8544 of the Government Code is amended to  
31 read:

32 8544. (a) Consistent with subdivision (i) of Section 8546, the  
33 State Auditor may employ and fix the compensation, in accordance  
34 with Article VII of the California Constitution, of those  
35 professional assistants and technical, clerical, deputy state auditors,  
36 and other officers and employees as he or she deems necessary for  
37 the effective conduct of the work under his or her charge.

38 (b) In establishing and adjusting classes of positions, and  
39 establishing and adjusting salary ranges for each class of position,  
40 to provide for the continued ability to attract and maintain qualified

1 individuals within the State Auditor's Office, consideration shall  
2 be given to the fact that the level of education, experience,  
3 knowledge, and ability required of the employees in the office is  
4 generally higher than that of state service generally, due to the  
5 unique duties and responsibilities imposed on the office and the  
6 relatively small number of employees.

7 (c) When fixing compensation for employees, the State Auditor  
8 shall consider prevailing rates for comparable service in other  
9 public employment and private business.

10 SEC. 9. Section 8544.2 of the Government Code is amended  
11 to read:

12 8544.2. Persons employed by the office pursuant to Section  
13 8544.1 shall be allowed to enroll in the Public Employees' Medical  
14 and Hospital Care Act contained in Part 5 (commencing with  
15 Section 22751) of Division 5 of Title 2.

16 SEC. 10. Section 8544.3 of the Government Code is amended  
17 to read:

18 8544.3. All persons employed by the office pursuant to Section  
19 8544.1 who were members of the Public Employees' Retirement  
20 System as of November 3, 1992, shall retain their existing  
21 classification within the system and shall be considered state  
22 miscellaneous members as defined in Section 20014.

23 SEC. 11. Section 8544.5 of the Government Code is amended  
24 to read:

25 8544.5. (a) There is hereby established in the State Treasury  
26 the State Audit Fund. Notwithstanding Section 13340, the State  
27 Audit Fund is continuously appropriated for the expenses of the  
28 State Auditor. There shall be appropriated annually in the Budget  
29 Act to the State Audit Fund, from the General Fund and the Central  
30 Service Cost Recovery Fund, the amount necessary to reimburse  
31 the State Audit Fund for the cost of audits and any other duties to  
32 be performed that are not directly reimbursed under subdivision  
33 (c), including for the cost of any other duties imposed on the ~~bureau~~  
34 *office* by statute. "Cost of audits or any other duties" means all  
35 direct and indirect costs of conducting the audits or other duties,  
36 and any other expenses incurred by the State Auditor in fulfilling  
37 his or her statutory responsibilities.

38 (b) With regard to the funds appropriated pursuant to subdivision  
39 (a), upon certification by the State Auditor of estimated costs on  
40 a monthly basis, the Controller shall transfer the amount thus

1 certified from the General Fund or the Central Service Cost  
2 Recovery Fund, as applicable, to the State Audit Fund. The  
3 Controller shall thereafter issue warrants drawn against the State  
4 Audit Fund upon receipt of claims certified by the State Auditor.

5 (c) To ensure appropriate reimbursement from federal and  
6 special funds for the costs of the duties performed pursuant to  
7 Section 8546.3, the State Auditor may directly bill state agencies  
8 for the costs incurred, subject to the approval of the Director of  
9 Finance.

10 (d) To ensure adequate oversight of the operations of the office,  
11 the Milton Marks “Little Hoover” Commission on California State  
12 Government Organization and Economy shall annually obtain the  
13 services of an independent public accountant to audit the State  
14 Audit Fund and the operation of the office to ensure compliance  
15 with state law, including Section 8546. The results of this audit  
16 shall be submitted to the commission and shall be a public record.

17 (e) To ensure that audits of the Milton Marks “Little Hoover”  
18 Commission on California State Government Organization and  
19 Economy are conducted in conformity with government auditing  
20 standards, any audit of the commission that is required or permitted  
21 by law shall be conducted by the independent public accountant  
22 selected pursuant to subdivision (d).

23 SEC. 12. Section 8544.6 of the Government Code is amended  
24 to read:

25 8544.6. All unreimbursed expenditures of the office are defined  
26 as “administrative costs” defined in Section 11270.

27 SEC. 13. Section 8545 of the Government Code is amended  
28 to read:

29 8545. The State Auditor shall not destroy any papers or  
30 memoranda used to support a completed audit sooner than three  
31 years after the audit report is released to the public. All books,  
32 papers, records, and correspondence of the office pertaining to its  
33 work are public records subject to Chapter 3.5 (commencing with  
34 Section 6250) of Division 7 of Title 1 and shall be filed at any of  
35 the regularly maintained offices of the State Auditor, except that  
36 none of the following items or papers of which these items are a  
37 part shall be released to the public by the State Auditor, his or her  
38 employees, or members of the commission:

39 (a) Personal papers and correspondence of any person providing  
40 assistance to the State Auditor when that person has requested in



1 writing that his or her papers and correspondence be kept private  
2 and confidential. Those papers and correspondence shall become  
3 public records if the written request is withdrawn or upon the order  
4 of the State Auditor.

5 (b) Papers, correspondence, memoranda, or any substantive  
6 information pertaining to any audit not completed.

7 (c) Papers, correspondence, or memoranda pertaining to any  
8 audit that has been completed, which papers, correspondence, or  
9 memoranda are not used in support of any report resulting from  
10 the audit.

11 (d) Any survey of public employees that the State Auditor  
12 determines should be kept confidential because the employees  
13 have expressed fear of retaliation by their employer if they respond  
14 to the survey.

15 SEC. 14. Section 8545.1 of the Government Code is amended  
16 to read:

17 8545.1. (a) The State Auditor, and any employee or former  
18 employee of the office, shall not divulge or make known to any  
19 person not employed by the office in any manner not expressly  
20 permitted by law any particulars of any record, document, or  
21 information the disclosure of which is restricted by law from  
22 release to the public. This prohibition includes, but is not limited  
23 to, the restrictions on the release of records, documents, or  
24 information set forth in Section 8545.

25 (b) Subdivision (a) also applies to either of the following:

26 (1) Any person or business entity that is contracting with or has  
27 contracted with the office and to the employees and former  
28 employees of that person or business entity.

29 (2) The officers and employees of and any person or business  
30 entity that is contracting with or has contracted with any state or  
31 local governmental agency or publicly created entity that has  
32 assisted the office in the course of any audit or investigation or  
33 that has received a draft copy of any report or other draft document  
34 from the office for comment or review.

35 (c) Any officer, employee, or person who discloses the  
36 particulars of any record, document, or other information in  
37 violation of this section is guilty of a misdemeanor.

38 SEC. 15. Section 8546 of the Government Code is amended  
39 to read:

8546. It is the intent of the Legislature that the State Auditor's Office have the independence necessary to conduct all of its audits in conformity with "Government Auditing Standards" published by the Comptroller General of the United States and the standards published by the American Institute of Certified Public Accountants, free from influence of existing state control agencies that could be the subject of audits conducted by the office. Therefore, all of the following exclusions apply to the office:

(a) Notwithstanding Section 19790, the State Auditor shall establish an equal employment opportunity program that shall meet the criteria and objectives established by the State Personnel Board. The State Auditor shall report annually to the State Personnel Board and the commission regarding the program.

(b) Notwithstanding Section 12470, the State Auditor shall be responsible for maintaining its payroll system. In lieu of audits of the uniform payroll system performed by the Controller or any other department, the office shall contract pursuant to subdivision (e) of Section 8544.5 for an annual audit of its payroll and financial operations by an independent public accountant.

(c) Notwithstanding Section 13292, the State Auditor is delegated the authority to establish and administer the fiscal and administrative policies of the office in conformity with the State Administrative Manual without oversight by the Department of Finance, the Department of Information Technology, or any other state agency.

(d) Notwithstanding Section 11032, the State Auditor may approve actual and necessary traveling expenses for travel outside the state for officers and employees of the office.

(e) Notwithstanding Section 11033, the State Auditor or officers and employees of the office may be absent from the state on business of the state upon approval of the State Auditor or Chief Deputy State Auditor.

(f) Sections 11040, 11042, and 11043 shall not apply to the State Auditor's Office. The State Auditor may employ legal counsel under those terms that he or she deems necessary to conduct the legal business of, or render legal counsel to, the State Auditor.

(g) The provisions and definitions of Article 2 (commencing with Section 11342.510) of Chapter 3.5 of Division 3 shall not be construed to include the State Auditor's Office. The State Auditor may adopt regulations necessary for the operation of the ~~bureau~~

1 *office* pursuant to the provisions of the Administrative Procedure  
2 Act (Chapter 3.5 (commencing with Section 11340) of Division  
3 3), but these regulations shall not be subject to the review or  
4 approval of the Office of Administrative Law.

5 (h) The State Auditor shall be exempt from all contract  
6 requirements of the Public Contract Code that require oversight,  
7 review, or approval by the Department of General Services or any  
8 other state agency. The State Auditor may contract on behalf of  
9 the State of California for goods and services that he or she deems  
10 necessary for the furtherance of the purposes of the office.

11 (i) (1) Subject to Article VII of the California Constitution, the  
12 State Auditor is delegated the authority to establish and administer  
13 the personnel policies and practices of the State Auditor's Office  
14 in conformity with Part 2.6 (commencing with Section 19815) of  
15 Division 5 of Title 2 without oversight or approval by the  
16 Department of Personnel Administration.

17 (2) At the election of the State Auditor, officers and employees  
18 of the office may participate in benefits programs administered by  
19 the Department of Personnel Administration subject to the same  
20 conditions for participation that apply to civil service employees  
21 in other state agencies. For the purposes of benefits programs  
22 administration only, the State Auditor is subject to the  
23 determinations of the department. The State Auditor's Office shall  
24 reimburse the Department of Personnel Administration for the  
25 normal administrative costs incurred by the Department of  
26 Personnel Administration and for any extraordinary costs resulting  
27 from the inclusion of the office employees in these state benefit  
28 programs.

29 SEC. 16. Section 8546.4 of the Government Code is amended  
30 to read:

31 8546.4. (a) The State Auditor shall annually issue an auditor's  
32 report based upon the general purpose financial statements included  
33 in the Controller's annual report that is submitted to the Governor  
34 pursuant to Section 12460. The report shall be in accordance with  
35 the "Government Auditing Standards" published by the  
36 Comptroller General of the United States and the standards  
37 published by the American Institute of Certified Public  
38 Accountants.

39 (b) The State Auditor, in the performance of this annual audit  
40 and any other audit or investigation undertaken by the office, may

1 examine all the financial records, accounts, and documents of any  
2 state agency as defined by Section 11000.

3 (c) The State Auditor shall rely, to the maximum extent possible,  
4 upon the audits performed by the Controller, the Department of  
5 Finance, internal auditors of state agencies, and independent  
6 contractors. The Director of Finance shall be responsible for  
7 coordinating and providing technical assistance to the internal  
8 auditors of state agencies. Nothing in this article is intended to  
9 reduce or restrict the operations of internal auditors whose review  
10 of internal financial and administrative controls of state agencies  
11 is essential for coordinated audits.

12 (d) State agencies receiving federal funds shall be primarily  
13 responsible for arranging for federally required financial and  
14 compliance audits. State agencies shall immediately notify the  
15 Director of Finance, the State Auditor, and the Controller when  
16 they are required to obtain federally required financial and  
17 compliance audits. The Director of Finance, the State Auditor, and  
18 the Controller shall coordinate the procurement by state agencies,  
19 including any negotiations with cognizant federal agencies, of  
20 federally required financial and compliance audits.

21 (e) To prevent duplication of the annual audit conducted by the  
22 State Auditor pursuant to subdivision (a), except for those state  
23 agencies that are required by state law to obtain an annual audit,  
24 no state agency shall enter into a contract for a financial or  
25 compliance audit without prior written approval of the Controller  
26 and the Director of Finance, which approval shall state the reason  
27 for the contract and shall be filed with the State Auditor at least  
28 30 days prior to the award of the contract. No funds appropriated  
29 by the Legislature shall be encumbered for the purpose of funding  
30 any contract for an audit that duplicates the annual financial audit  
31 conducted by the State Auditor.

32 (f) Notwithstanding any other provision of this article, nothing  
33 in this section shall be construed to limit, restrict, or otherwise  
34 infringe upon the constitutional or statutory authority of the  
35 Controller to superintend the fiscal concerns of the state.

36 (g) Except as provided in subdivision (b), notwithstanding any  
37 other provision of this article, nothing in this section shall be  
38 construed to limit, restrict, or otherwise infringe upon the statutory  
39 authority of the Director of Finance to supervise the financial and  
40 business policies of the state.

1 SEC. 17. Section 8546.8 of the Government Code is amended  
2 to read:

3 8546.8. Unless the contrary is stated or clearly appears from  
4 the context, any reference to the Auditor General or the Office of  
5 the Auditor General in any statute or contract in effect on the  
6 effective date of this chapter, other than Chapter 4 (commencing  
7 with Section 10500), with respect to the performance of audits,  
8 shall be construed to refer to the State Auditor and the State  
9 Auditor's Office, respectively.

10 SEC. 18. Section 8546.10 of the Government Code is amended  
11 to read:

12 8546.10. (a) The State Auditor may establish a high-risk local  
13 government agency audit program for the purpose of identifying,  
14 auditing, and issuing reports on any local government agency,  
15 including, but not limited to, any city, county, special district, or  
16 any publicly created entity, whether created by the California  
17 Constitution or otherwise, that the State Auditor identifies as being  
18 at high risk for the potential of waste, fraud, abuse, or  
19 mismanagement or that has major challenges associated with its  
20 economy, efficiency, or effectiveness.

21 (b) In addition to identifying a local government agency as high  
22 risk on the basis of weaknesses identified in audit and investigative  
23 reports produced by the office, the State Auditor may consult with  
24 the Controller, Attorney General, and other state agencies that  
25 have oversight responsibilities over any local government agency,  
26 in identifying local governments that are at high risk.

27 (c) The State Auditor's Office shall be responsible for the state  
28 costs associated with the high-risk local government agency audit  
29 program, shall conduct the program as funds permit, and shall only  
30 conduct the program to the extent that it does not interfere with  
31 duties related to mandated audits and requests from the Joint  
32 Legislative Audit Committee.

33 (d) (1) The State Auditor shall notify the Joint Legislative Audit  
34 Committee whenever he or she identifies a local government as  
35 at high risk.

36 (2) The State Auditor shall provide the Joint Legislative Audit  
37 Committee, at a public hearing of the committee, an annual update  
38 of all audits in progress.

39 (3) If a local government agency has taken significant corrective  
40 measures for deficiencies identified by the State Auditor, that

1 agency shall be removed from the high-risk local government  
2 agency audit program.

3 (e) Notwithstanding the requirements of Section 10231.5, if the  
4 State Auditor establishes the program provided for in this section  
5 and the State Auditor determines that a local agency is at high risk,  
6 the State Auditor shall issue audit reports at least once every two  
7 years with recommendations for improvement in such a local  
8 government so identified.

9 (f) Audits conducted pursuant to this section shall be approved  
10 by the Joint Legislative Audit Committee.

11 SEC. 19. Section 8547.2 of the Government Code is amended  
12 to read:

13 8547.2. For the purposes of this article, the following terms  
14 have the following meanings:

15 (a) “Employee” means an individual appointed by the Governor,  
16 or employed or holding office in a state agency as defined by  
17 Section 11000, including, for purposes of Sections 8547.3 to  
18 8547.7, inclusive, an employee of the California State University,  
19 or an individual appointed by the Legislature to a state board or  
20 commission and who is not a Member or employee of the  
21 Legislature. In addition, “employee” means a person employed by  
22 the Supreme Court, a court of appeal, a superior court, or the  
23 Administrative Office of the Courts for the purposes of Sections  
24 8547.3 to 8547.7, inclusive, and Section 8547.13, except for those  
25 provisions of Section 8547.4 concerning notice of adverse action  
26 and the State Personnel Board. “Employee” includes a former  
27 employee who met the criteria of this subdivision during his or  
28 her employment.

29 (b) “Illegal order” means a directive to violate or assist in  
30 violating a federal, state, or local law, rule, or regulation, or an  
31 order to work or cause others to work in conditions outside of their  
32 line of duty that would unreasonably threaten the health or safety  
33 of employees or the public.

34 (c) “Improper governmental activity” means an activity by a  
35 state agency or by an employee that is undertaken in the  
36 performance of the employee’s duties, undertaken inside a state  
37 office, or, if undertaken outside a state office by the employee,  
38 directly relates to state government, whether or not that activity is  
39 within the scope of his or her employment, and that (1) is in  
40 violation of any state or federal law or regulation, including, but

1 not limited to, corruption, malfeasance, bribery, theft of  
2 government property, fraudulent claims, fraud, coercion,  
3 conversion, malicious prosecution, misuse of government property,  
4 or willful omission to perform duty, (2) is in violation of an  
5 Executive order of the Governor, a California Rule of Court, or  
6 any policy or procedure mandated by the State Administrative  
7 Manual or State Contracting Manual, or (3) is economically  
8 wasteful, involves gross misconduct, incompetency, or inefficiency.  
9 For purposes of Sections 8547.4, 8547.5, 8547.7, 8547.10, and  
10 8547.11, “improper governmental activity” includes any activity  
11 by the University of California or by an employee, including an  
12 officer or faculty member, who otherwise meets the criteria of this  
13 subdivision. For purposes of Sections 8547.4, 8547.5, and 8547.13,  
14 “improper governmental activity” includes any activity by the  
15 Supreme Court, a court of appeal, a superior court, or the  
16 Administrative Office of the Courts, or by an employee thereof,  
17 who otherwise meets the criteria of this subdivision.

18 (d) “Person” means an individual, corporation, trust, association,  
19 a state or local government, or an agency or instrumentality of any  
20 of the foregoing.

21 (e) “Protected disclosure” means a good faith communication,  
22 including a communication based on, or when carrying out, job  
23 duties, that discloses or demonstrates an intention to disclose  
24 information that may evidence (1) an improper governmental  
25 activity, or (2) a condition that may significantly threaten the health  
26 or safety of employees or the public if the disclosure or intention  
27 to disclose was made for the purpose of remedying that condition.  
28 Protected disclosure specifically includes a good faith  
29 communication to the State Auditor’s Office alleging an improper  
30 governmental activity and any evidence delivered to the State  
31 Auditor’s Office in support of the allegation. “Protected disclosure”  
32 also includes, but is not limited to, a complaint made to the  
33 Commission on Judicial Performance.

34 (f) “State agency” is defined by Section 11000. “State agency”  
35 includes the University of California for purposes of Sections  
36 8547.5 to 8547.7, inclusive, and the California State University  
37 for purposes of Sections 8547.3 to 8547.7, inclusive. Sections  
38 8547.3 to 8547.7, inclusive, shall apply to the Supreme Court, the  
39 courts of appeal, the superior courts, and the Administrative Office  
40 of the Courts in the same manner as they apply to a state agency.

1 SEC. 20. Section 8548.4 of the Government Code is amended  
2 to read:

3 8548.4. The State Auditor shall post the information described  
4 in Section 8548.1 on the *Internet* Web site of the State Auditor's  
5 Office.

6 SEC. 21. Section 54954.5 of the Government Code is amended  
7 to read:

8 54954.5. For purposes of describing closed session items  
9 pursuant to Section 54954.2, the agenda may describe closed  
10 sessions as provided below. No legislative body or elected official  
11 shall be in violation of Section 54954.2 or 54956 if the closed  
12 session items were described in substantial compliance with this  
13 section. Substantial compliance is satisfied by including the  
14 information provided below, irrespective of its format.

15 (a) With respect to a closed session held pursuant to Section  
16 54956.7:

17 LICENSE/PERMIT DETERMINATION

18 Applicant(s): (Specify number of applicants)

19 (b) With respect to every item of business to be discussed in  
20 closed session pursuant to Section 54956.8:

21 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

22 Property: (Specify street address, or if no street address, the  
23 parcel number or other unique reference, of the real property under  
24 negotiation)

25 Agency negotiator: (Specify names of negotiators attending the  
26 closed session) (If circumstances necessitate the absence of a  
27 specified negotiator, an agent or designee may participate in place  
28 of the absent negotiator so long as the name of the agent or  
29 designee is announced at an open session held prior to the closed  
30 session.)

31 Negotiating parties: (Specify name of party (not agent))

32 Under negotiation: (Specify whether instruction to negotiator  
33 will concern price, terms of payment, or both)

34 (c) With respect to every item of business to be discussed in  
35 closed session pursuant to Section 54956.9:

36 CONFERENCE WITH LEGAL COUNSEL—EXISTING  
37 LITIGATION

38 (Subdivision (a) of Section 54956.9)

39 Name of case: (Specify by reference to claimant's name, names  
40 of parties, case or claim numbers)



1 or

2 Case name unspecified: (Specify whether disclosure would  
3 jeopardize service of process or existing settlement negotiations)

4 CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED  
5 LITIGATION

6 Significant exposure to litigation pursuant to subdivision (b) of  
7 Section 54956.9: (Specify number of potential cases)

8 (In addition to the information noticed above, the agency may  
9 be required to provide additional information on the agenda or in  
10 an oral statement prior to the closed session pursuant to  
11 subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision  
12 (b) of Section 54956.9.)

13 Initiation of litigation pursuant to subdivision (c) of Section  
14 54956.9: (Specify number of potential cases)

15 (d) With respect to every item of business to be discussed in  
16 closed session pursuant to Section 54956.95:

17 LIABILITY CLAIMS

18 Claimant: (Specify name unless unspecified pursuant to Section  
19 54961)

20 Agency claimed against: (Specify name)

21 (e) With respect to every item of business to be discussed in  
22 closed session pursuant to Section 54957:

23 THREAT TO PUBLIC SERVICES OR FACILITIES

24 Consultation with: (Specify name of law enforcement agency  
25 and title of officer, or name of applicable agency representative  
26 and title)

27 PUBLIC EMPLOYEE APPOINTMENT

28 Title: (Specify description of position to be filled)

29 PUBLIC EMPLOYMENT

30 Title: (Specify description of position to be filled)

31 PUBLIC EMPLOYEE PERFORMANCE EVALUATION

32 Title: (Specify position title of employee being reviewed)

33 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

34 (No additional information is required in connection with a  
35 closed session to consider discipline, dismissal, or release of a  
36 public employee. Discipline includes potential reduction of  
37 compensation.)

38 (f) With respect to every item of business to be discussed in  
39 closed session pursuant to Section 54957.6:

40 CONFERENCE WITH LABOR NEGOTIATORS

1 Agency designated representatives: (Specify names of designated  
2 representatives attending the closed session) (If circumstances  
3 necessitate the absence of a specified designated representative,  
4 an agent or designee may participate in place of the absent  
5 representative so long as the name of the agent or designee is  
6 announced at an open session held prior to the closed session.)

7 Employee organization: (Specify name of organization  
8 representing employee or employees in question)

9 or

10 Unrepresented employee: (Specify position title of unrepresented  
11 employee who is the subject of the negotiations)

12 (g) With respect to closed sessions called pursuant to Section  
13 54957.8:

14 CASE REVIEW/PLANNING

15 (No additional information is required in connection with a  
16 closed session to consider case review or planning.)

17 (h) With respect to every item of business to be discussed in  
18 closed session pursuant to Sections 1461, 32106, and 32155 of the  
19 Health and Safety Code or Sections 37606 and 37624.3 of the  
20 Government Code:

21 REPORT INVOLVING TRADE SECRET

22 Discussion will concern: (Specify whether discussion will  
23 concern proposed new service, program, or facility)

24 Estimated date of public disclosure: (Specify month and year)

25 HEARINGS

26 Subject matter: (Specify whether testimony/deliberation will  
27 concern staff privileges, report of medical audit committee, or  
28 report of quality assurance committee)

29 (i) With respect to every item of business to be discussed in  
30 closed session pursuant to Section 54956.86:

31 CHARGE OR COMPLAINT INVOLVING INFORMATION  
32 PROTECTED BY FEDERAL LAW

33 (No additional information is required in connection with a  
34 closed session to discuss a charge or complaint pursuant to Section  
35 54956.86.)

36 (j) With respect to every item of business to be discussed in  
37 closed session pursuant to Section 54956.96:

38 CONFERENCE INVOLVING A JOINT POWERS AGENCY  
39 (Specify by name)

1 Discussion will concern: (Specify closed session description  
2 used by the joint powers agency)

3 Name of local agency representative on joint powers agency  
4 board: (Specify name)

5 (Additional information listing the names of agencies or titles  
6 of representatives attending the closed session as consultants or  
7 other representatives.)

8 (k) With respect to every item of business to be discussed in  
9 closed session pursuant to Section 54956.75:

10 AUDIT BY STATE AUDITOR'S OFFICE

11 SEC. 22. Section 130506 of the Health and Safety Code is  
12 amended to read:

13 130506. (a) The department shall negotiate drug discount  
14 agreements with manufacturers to provide discounts for  
15 single-source and multiple-source prescription drugs through the  
16 program. The department shall attempt to negotiate the maximum  
17 possible discount for an eligible Californian. The department shall  
18 attempt to negotiate, with each manufacturer, discounts to offer  
19 single-source prescription drugs under the program at a volume  
20 weighted average discount that is equal to or below any one of the  
21 following benchmark prices:

22 (1) Eighty-five percent of the average manufacturer price for a  
23 drug, as published by the federal Centers for Medicare and  
24 Medicaid Services.

25 (2) The lowest price provided to any nonpublic entity in the  
26 state by a manufacturer to the extent that the Medicaid best price  
27 exists under federal law.

28 (3) The Medicaid best price, to the extent that this price exists  
29 under federal law.

30 (b) The department may require the drug manufacturer to  
31 provide information that is reasonably necessary for the department  
32 to carry out its duties pursuant to this division.

33 (c) The department shall pursue manufacturer discount  
34 agreements to ensure that the number and type of drugs available  
35 through the program is sufficient to give an eligible Californian a  
36 formulary comparable to the Medi-Cal list of contract drugs, or if  
37 this information is available to the department, a formulary that is  
38 comparable to that provided to CalPERS enrollees.

39 (d) To obtain the most favorable discounts, the department may  
40 limit the number of drugs available through the program.

(e) The drug discount agreements negotiated pursuant to this section shall be used to reduce the cost of drugs purchased by program participants and to fund program costs pursuant to Section 130542.1.

(f) All information reported by a manufacturer to, negotiations with, and agreements executed with, the department or its third-party vendor pursuant to this section, shall be considered confidential and corporate proprietary information. This information shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The State Auditor's Office and the Controller shall have access to pricing information in a manner that is consistent with their access to this information under the Medi-Cal program and under law. The State Auditor's Office and the Controller may use this information only to investigate or audit the administration of the program. Neither the State Auditor's Office, the Controller, nor the department may disclose this information in a form that identifies a specific manufacturer or wholesaler or prices charged for drugs of this manufacturer or wholesaler. Information provided to the department pursuant to subdivision (e) of Section 130530 shall not be affected by the confidentiality protections established by this subdivision.

(g) (1) Any pharmacy licensed pursuant to Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code may participate in the program.

(2) Any manufacturer may participate in the program.

SEC. 23. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the Fraud Division aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections 11760 and 11880, and in subdivision (a) of Section 1871.4, and in Section 549 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The Fraud Division shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in

1 subdivision (c) of Section 1877.1, suspected of actively engaging  
2 in the fraudulent denial of claims.

3 (b) To fund increased investigation and prosecution of workers'  
4 compensation fraud, and of willful failure to secure payment of  
5 workers' compensation, in violation of Section 3700.5 of the Labor  
6 Code, there shall be an annual assessment as follows:

7 (1) The aggregate amount of the assessment shall be determined  
8 by the Fraud Assessment Commission, which is hereby established.  
9 The commission shall be composed of seven members consisting  
10 of two representatives of organized labor, two representatives of  
11 self-insured employers, one representative of insured employers,  
12 one representative of workers' compensation insurers, and the  
13 President of the State Compensation Insurance Fund, or his or her  
14 designee.

15 The Governor shall appoint members representing organized  
16 labor, self-insured employers, insured employers, and insurers.  
17 The term of office of members of the commission shall be four  
18 years, and a member shall hold office until the appointment of a  
19 successor. The President of the State Compensation Insurance  
20 Fund shall be an ex officio, voting member of the commission.  
21 Members of the commission shall receive one hundred dollars  
22 (\$100) for each day of actual attendance at commission meetings  
23 and other official commission business, and shall also receive their  
24 actual and necessary traveling expenses incurred in the performance  
25 of commission duties. Payment of per diem and travel expenses  
26 shall be made from the Workers' Compensation Fraud Account  
27 in the Insurance Fund, established in paragraph (4), upon  
28 appropriation by the Legislature.

29 (2) In determining the aggregate amount of the assessment, the  
30 Fraud Assessment Commission shall consider the advice and  
31 recommendations of the Fraud Division and the commissioner.

32 (3) The aggregate amount of the assessment shall be collected  
33 by the Director of Industrial Relations pursuant to Section 62.6 of  
34 the Labor Code. The Fraud Assessment Commission shall annually  
35 advise the Director of Industrial Relations, not later than March  
36 15, of the aggregate amount to be assessed for the next fiscal year.

37 (4) The amount collected, together with the fines collected for  
38 violations of the unlawful acts specified in Sections 1871.4, 11760,  
39 and 11880, Section 3700.5 of the Labor Code, and Section 549 of  
40 the Penal Code, shall be deposited in the Workers' Compensation

1 Fraud Account in the Insurance Fund, which is hereby created,  
2 and may be used, upon appropriation by the Legislature, only for  
3 enhanced investigation and prosecution of workers' compensation  
4 fraud and of willful failure to secure payment of workers'  
5 compensation as provided in this section.

6 (c) For each fiscal year, the total amount of revenues derived  
7 from the assessment pursuant to subdivision (b) shall, together  
8 with amounts collected pursuant to fines imposed for unlawful  
9 acts described in Sections 1871.4, 11760, and 11880, Section  
10 3700.5 of the Labor Code, and Section 549 of the Penal Code, not  
11 be less than three million dollars (\$3,000,000). Any funds  
12 appropriated by the Legislature pursuant to subdivision (b) that  
13 are not expended in the fiscal year for which they have been  
14 appropriated, and that have not been allocated under subdivision  
15 (f), shall be applied to satisfy for the immediately following fiscal  
16 year the minimum total amount required by this subdivision. In  
17 no case may that money be transferred to the General Fund.

18 (d) After incidental expenses, at least 40 percent of the funds  
19 to be used for the purposes of this section shall be provided to the  
20 Fraud Division of the Department of Insurance for enhanced  
21 investigative efforts, and at least 40 percent of the funds shall be  
22 distributed to district attorneys, pursuant to a determination by the  
23 commissioner with the advice and consent of the division and the  
24 Fraud Assessment Commission, as to the most effective distribution  
25 of moneys for purposes of the investigation and prosecution of  
26 workers' compensation fraud cases and cases relating to the willful  
27 failure to secure the payment of workers' compensation. Each  
28 district attorney seeking a portion of the funds shall submit to the  
29 commissioner an application setting forth in detail the proposed  
30 use of any funds provided. A district attorney receiving funds  
31 pursuant to this subdivision shall submit an annual report to the  
32 commissioner with respect to the success of his or her efforts.  
33 Upon receipt, the commissioner shall provide copies to the Fraud  
34 Division and the Fraud Assessment Commission of any application,  
35 annual report, or other documents with respect to the allocation of  
36 money pursuant to this subdivision. Both the application for  
37 moneys and the distribution of moneys shall be public documents.  
38 Information submitted to the commissioner pursuant to this section  
39 concerning criminal investigations, whether active or inactive,  
40 shall be confidential.

1 (e) If a district attorney is determined by the commissioner to  
2 be unable or unwilling to investigate and prosecute workers'  
3 compensation fraud claims or claims relating to the willful failure  
4 to secure the payment of workers' compensation, the commissioner  
5 shall discontinue distribution of funds allocated for that county  
6 and may redistribute those funds according to this subdivision.

7 (1) The commissioner shall promptly determine whether any  
8 other county could assert jurisdiction to prosecute the fraud claims  
9 or claims relating to the willful failure to secure the payment of  
10 workers' compensation that would have been brought in the  
11 nonparticipating county, and if so, the commissioner may award  
12 funds to conduct the prosecutions redirected pursuant to this  
13 subdivision. These funds may be in addition to any other fraud  
14 prosecution funds or claims relating to the willful failure to secure  
15 the payment of workers' compensation prosecution otherwise  
16 awarded under this section. Any district attorney receiving funds  
17 pursuant to this subdivision shall first agree that the funds shall be  
18 used solely for investigating and prosecuting those cases of  
19 workers' compensation fraud or claims relating to the willful failure  
20 to secure the payment of workers' compensation that are redirected  
21 pursuant to this subdivision and submit an annual report to the  
22 commissioner with respect to the success of the district attorney's  
23 efforts. The commissioner shall keep the Fraud Assessment  
24 Commission fully informed of all reallocations of funds under this  
25 paragraph.

26 (2) If the commissioner determines that no district attorney is  
27 willing or able to investigate and prosecute the workers'  
28 compensation fraud claims or claims relating to the willful failure  
29 to secure the payment of workers' compensation arising in the  
30 nonparticipating county, the commissioner, with the advice and  
31 consent of the Fraud Assessment Commission, may award to the  
32 Attorney General some or all of the funds previously awarded to  
33 the nonparticipating county. Before the commissioner may award  
34 any funds, the Attorney General shall submit to the commissioner  
35 an application setting forth in detail his or her proposed use of any  
36 funds provided and agreeing that any funds awarded shall be used  
37 solely for investigating and prosecuting those cases of workers'  
38 compensation fraud or claims relating to the willful failure to secure  
39 the payment of workers' compensation that are redirected pursuant  
40 to this subdivision. The Attorney General shall submit an annual

1 report to the commissioner with respect to the success of the fraud  
2 prosecution efforts of his or her office.

3 (3) Neither the Attorney General nor any district attorney shall  
4 be required to relinquish control of any investigation or prosecution  
5 undertaken pursuant to this subdivision unless the commissioner  
6 determines that satisfactory progress is no longer being made on  
7 the case or the case has been abandoned.

8 (4) A county that has become a nonparticipating county due to  
9 the inability or unwillingness of its district attorney to investigate  
10 and prosecute workers' compensation fraud or the willful failure  
11 to secure the payment of workers' compensation shall not become  
12 eligible to receive funding under this section until it has submitted  
13 a new application that meets the requirements of subdivision (d)  
14 and the applicable regulations.

15 (f) If in any fiscal year the Fraud Division does not use all of  
16 the funds made available to it under subdivision (d), any remaining  
17 funds may be distributed to district attorneys pursuant to a  
18 determination by the commissioner in accordance with the same  
19 procedures set forth in subdivision (d).

20 (g) The commissioner shall adopt rules and regulations to  
21 implement this section in accordance with the rulemaking  
22 provisions of the Administrative Procedure Act (Chapter 3.5  
23 (commencing with Section 11340) of Part 1 of Division 3 of Title  
24 2 of the Government Code). Included in the rules and regulations  
25 shall be the criteria for redistributing funds to district attorneys  
26 and the Attorney General. The adoption of the rules and regulations  
27 shall be deemed to be an emergency and necessary for the  
28 immediate preservation of the public peace, health, and safety, or  
29 general welfare.

30 (h) The department shall report to the Governor, the Legislature,  
31 to the committees of the Senate and Assembly having jurisdiction  
32 over insurance, and the Fraud Assessment Commission on the  
33 activities of the Fraud Division and district attorneys supported  
34 by the funds provided by this section in the annual report submitted  
35 pursuant to Section 12922.

36 The annual report shall include, but is not limited to, all of the  
37 following information for the department and each district  
38 attorney's office:

39 (1) All allocations, distributions, and expenditures of funds.

40 (2) The number of search warrants issued.



1 (3) The number of arrests and prosecutions, and the aggregate  
2 number of parties involved in each.

3 (4) The number of convictions and the names of all convicted  
4 fraud perpetrators.

5 (5) The estimated value of all assets frozen, penalties assessed,  
6 and restitutions made for each conviction.

7 (6) Any additional items necessary to fully inform the Fraud  
8 Assessment Commission and the Legislature of the fraud-fighting  
9 efforts financed through this section.

10 (i) In order to meet the requirements of subdivision (g), the  
11 department shall submit a biannual information request to those  
12 district attorneys who have applied for and received funding  
13 through the annual assessment process under this section.

14 (j) Assessments levied or collected to fight workers'  
15 compensation fraud and insurance fraud are not taxes. Those funds  
16 are entrusted to the state to fight fraud and the willful failure to  
17 secure the payment of workers' compensation by funding state  
18 and local investigation and prosecution efforts. Accordingly, any  
19 funds resulting from assessments, fees, penalties, fines, restitution,  
20 or recovery of costs of investigation and prosecution deposited in  
21 the Insurance Fund shall not be deemed "unexpended" funds for  
22 any purpose and, if remaining in that account at the end of any  
23 fiscal year, shall be applied as provided in subdivision (f) and to  
24 offset or augment subsequent years' program funding.

25 (k) The State Auditor's Office shall evaluate the effectiveness  
26 of the efforts of the Fraud Assessment Commission, the Fraud  
27 Division, the Department of Insurance, and the Department of  
28 Industrial Relations, as well as local law enforcement agencies,  
29 including district attorneys, in identifying, investigating, and  
30 prosecuting workers' compensation fraud and the willful failure  
31 to secure payment of workers' compensation. The report shall  
32 specifically identify areas of deficiencies. Included in this report  
33 shall be recommendations on whether the current program provides  
34 the appropriate levels of accountability for those responsible for  
35 the allocation and expenditure of funds raised from the assessment  
36 provided in this section. The State Auditor's Office shall submit  
37 a report to the Chairperson of the Senate Committee on Labor and  
38 Industrial Relations and the Chairperson of the Assembly  
39 Committee on Insurance on or before May 1, 2004.

40 SEC. 24. Section 5024 of the Penal Code is amended to read:

1     5024. (a) The Legislature finds and declares that:

2     (1) State costs for purchasing drugs and medical supplies for  
3 the health care of offenders in state custody have grown rapidly  
4 in recent years and will amount to almost seventy-five million  
5 dollars (\$75,000,000) annually in the 1999–2000 fiscal year.

6     (2) The State Auditor’s Office found in a January 2000 audit  
7 report that the state could save millions of dollars annually by  
8 improving its current processes for the procurement of drugs for  
9 inmate health care and by pursuing alternative procurement  
10 methods.

11    (3) It is the intent of the Legislature that the Department of  
12 Corrections and Rehabilitation, in cooperation with the Department  
13 of General Services and other appropriate state agencies, take  
14 prompt action to adopt cost-effective reforms in its drug and  
15 medical supply procurement processes by establishing a program  
16 to obtain rebates from drug manufacturers, implementing  
17 alternative contracting and procurement reforms, or by some  
18 combination of these steps.

19    (b) (1) The Secretary of the Department of Corrections and  
20 Rehabilitation, pursuant to the Administrative Procedure Act;  
21 ~~Chapter~~ (*Chapter* 3.5 (commencing with Section 11340) of Part  
22 1 of Division 3 of Title 2 of the Government-~~Code~~, *Code*) may  
23 adopt regulations requiring manufacturers of drugs to pay the  
24 department a rebate for the purchase of drugs for offenders in state  
25 custody that is at least equal to the rebate that would be applicable  
26 to the drug under Section 1927(c) of the federal Social Security  
27 Act (42 U.S.C. Sec. 1396r-8(c)). Any such regulation shall, at a  
28 minimum, specify the procedures for notifying drug manufacturers  
29 of the rebate requirements and for collecting rebate payments.

30    (2) If a rebate program is implemented, the director shall  
31 develop, maintain, and update as necessary a list of drugs to be  
32 provided under the rebate program, and establish a rate structure  
33 for reimbursement of each drug included in the rebate program.  
34 Rates shall not be less than the actual cost of the drug. However,  
35 the director may purchase a listed drug directly from the  
36 manufacturer and negotiate the most favorable bulk price for that  
37 drug. In order to minimize state administrative costs and maximize  
38 state benefits for the rebate program, the director may establish a  
39 program that focuses upon obtaining rebates for those drugs that

1 it determines are purchased by the department in relatively large  
2 volumes.

3 (3) If a rebate program is implemented, the department shall  
4 submit an invoice, not less than two times per year, to each  
5 manufacturer for the amount of the rebate required by this  
6 subdivision. Drugs may be removed from the list for failure to pay  
7 the rebate required by this subdivision, unless the department  
8 determines that purchase of the drug is a medical necessity or that  
9 purchase of the drug is necessary to comply with a court order to  
10 ensure the appropriate provision of quality health care to offenders  
11 in state custody.

12 (4) In order to minimize state administrative costs and maximize  
13 state benefits for such a rebate program, if one is implemented,  
14 the Department of Corrections and Rehabilitation may enter into  
15 interagency agreements with the Department of General Services,  
16 the State Department of Health Services, the State Department of  
17 Mental Health, or the State Department of Developmental Services,  
18 the University of California, another appropriate state department,  
19 or with more than one of those entities, for joint participation in a  
20 rebate program, collection and monitoring of necessary drug price  
21 and rebate data, the billing of manufacturers for rebates, the  
22 resolution of any disputes over rebates, and any other services  
23 necessary for the cost-effective operation of the rebate program.

24 (5) The Department of Corrections and Rehabilitation, separately  
25 or in cooperation with other state agencies, may contract for the  
26 services of a pharmaceutical benefits manager for any services  
27 necessary for the cost-effective operation of the rebate program,  
28 if one is implemented, or for other services to improve the  
29 contracting and procurement of drugs and medical supplies for  
30 inmate health care.

31 (c) Nothing in this section shall prohibit the department, as an  
32 alternative to or in addition to establishing a rebate program for  
33 drugs for inmate health care, from implementing, in cooperation  
34 with the Department of General Services and other appropriate  
35 state agencies, other cost-effective strategies for procurement of  
36 drugs and medical supplies for offenders in state custody,  
37 including, but not limited to:

38 (1) Improvements in the existing statewide master agreement  
39 procedures for purchasing contract and noncontract drugs at a  
40 discount from drug manufacturers.

1 (2) Participation by offenders in state custody infected with  
2 human immunodeficiency virus (HIV), the etiologic agent of  
3 acquired immune deficiency syndrome (AIDS), in the AIDS Drug  
4 Assistance Program.

5 (3) Membership in the Minnesota Multistate Contracting  
6 Alliance for Pharmacy (MMCAP) or other cooperative purchasing  
7 arrangements with other governmental entities.

8 (4) Greater centralization or standardization of procurement of  
9 drugs and medical supplies among individual prisons in the  
10 Department of Corrections and Rehabilitation prison system.

11 (d) The State Auditor's Office shall report to the Legislature  
12 and the Governor by January 10, 2002, its findings in regard to:

13 (1) An evaluation of the trends in state costs for the procurement  
14 of drugs and medical supplies for offenders in state custody, and  
15 an assessment of the major factors affecting those trends.

16 (2) A summary of the steps taken by the Department of  
17 Corrections and Rehabilitation, the Department of General  
18 Services, and other appropriate state agencies to implement this  
19 section.

20 (3) An evaluation of the compliance by these state agencies  
21 with the findings and recommendations of the January 2000 Bureau  
22 of State Audits report for reform of procurement of drugs and  
23 medical supplies for offenders in state custody.

24 (4) Any further recommendations of the State Auditor's Office  
25 for reform of state drug procurement practices, policies, or statutes.

26 SEC. 25. Section 71560 of the Public Resources Code is  
27 amended to read:

28 71560. (a) The endowment may receive charitable  
29 contributions or any sources of income that may be lawfully  
30 received, including loans from the state.

31 (b) The endowment shall administer any funds it receives in  
32 accordance with this division.

33 (c) (1) Except as provided in paragraph (2), the endowment  
34 shall invest and manage any funds it receives so that the  
35 investments shall provide a source of income in perpetuity and the  
36 principal amount consisting of charitable contributions and  
37 donations, including cost savings donated pursuant to Section 6618  
38 of the Fish and Game Code, shall not be spent. Any returns on  
39 investments made by the endowment are the only funds that shall  
40 be available for expenditure by the endowment.

(2) Ten percent of any funds received by the endowment pursuant to Section 6618 of the Fish and Game Code in a calendar year shall be allocated by the endowment board, pursuant to Section 71552, as grants for projects or programs consistent with the purpose of this chapter within 24 months of receipt of the funds. The majority of these funds shall be granted to state agencies engaged in coastal and ocean protection.

(d) The endowment shall invest and manage any funds it receives in accordance with the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code).

(e) The accounts of the endowment shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants.

(f) The financial transactions of the endowment for any fiscal year may be audited by the State Auditor's Office.

(g) Each recipient of assistance by grant, contract, or loan pursuant to this division shall keep records reasonably necessary to disclose fully the amount of the assistance, the disposition of the assistance, the total cost of the project or undertaking in connection with which the assistance is given or used, the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and other records that will facilitate an effective audit. Each recipient of a fixed price contract awarded pursuant to competitive bidding procedures is exempt from this subdivision.

(h) The endowment, or its authorized representative, and the State Auditor's Office shall have access to any records necessary for the purpose of auditing and examining all funds received or expended by the recipients of assistance.

SEC. 26. Section 421 of the Public Utilities Code is amended to read:

421. (a) The commission shall annually determine a fee to be paid by every passenger stage corporation, charter-party carrier of passengers, pipeline corporation, for-hire vessel operator, common carrier vessel operator, railroad corporation, and commercial air operator, and every other common carrier and related business subject to the jurisdiction of the commission, except as otherwise provided in Article 3 (commencing with Section 431) of this

chapter and Chapter 6 (commencing with Section 5001) of Division 2.

(b) The annual fee shall be established to produce a total amount equal to the amount established in the authorized commission budget for the same year, including adjustments appropriated by the Legislature and an appropriate reserve, to regulate common carriers and related businesses, less the amount to be paid from special accounts or funds pursuant to Section 403, reimbursements, federal funds, other revenues, and unencumbered funds from the preceding year.

(c) Notwithstanding any other provision of law, the fees paid by railroad corporations shall be used for state-funded railroad investigation and enforcement activities of the commission, other than the rail safety activities funded by the Transportation Planning and Development Account pursuant to Section 99315. The railroad fees shall be set annually at a level which generates not less than the amount sufficient to fund activities pursuant to Sections 765.5, 7711, and 7712.

(d) On January 1, 1992, the commission shall submit to the Legislature a detailed budget implementing this section for the 1992–93 fiscal year. The commission shall also submit to the Legislature by January 1, 1993, and on each January 1 thereafter, a detailed budget for expenditure of railroad corporation fees for the ensuing budget year. The budget for expenditure of railroad corporation fees, for each of the 1996–97 and 1997–98 fiscal years, shall not exceed the amount of three million dollars (\$3,000,000). Expenditures of this budget shall be limited to the following items:

(1) Expenditures for employees occupying, and actually performing service in, railroad-safety personnel positions that are directly involved in inspecting railroads and enforcing rail safety regulations. The commission shall expend the funds budgeted pursuant to this subdivision for the salaries, per diem, and travel expenses of employees specified in this paragraph, unless, by statute, the commission is specifically prohibited from expending all or part of those funds.

(2) Expenditures for employees occupying, and actually performing service in, clerical and support staff positions that are directly associated with railroad-safety inspections.

1 (3) Expenditures for legal personnel who actually pursue  
2 violations of rail safety regulations beyond the informal complaint  
3 level.

4 (4) Expenditures for an audit by the State Auditor's Office  
5 pursuant to subdivision (f), not to exceed seventy-five thousand  
6 dollars (\$75,000).

7 (5) Expenditures for the pro rata share of the commission's  
8 overhead costs while state personnel are actually occupying the  
9 positions, and are performing the duties specified in paragraphs  
10 (1) to (4), inclusive.

11 (e) The Department of Finance shall notify the Joint Legislative  
12 Budget Committee, pursuant to Section 28.00 of the annual Budget  
13 Act, prior to authorizing any change in the Budget Act  
14 appropriation for railroad corporation fees that is larger than one  
15 hundred thousand dollars (\$100,000), or 10 percent of the amount  
16 budgeted, whichever is less.

17 (f) Except as otherwise provided in this subdivision,  
18 commencing with the 1993–94 fiscal year, and in each subsequent  
19 fiscal year until the 1999–2000 fiscal year, the commission shall  
20 conduct an audit of the expenditure of the funds received pursuant  
21 to this section, except that for the 1996–97 fiscal year and fiscal  
22 years thereafter the audit shall be conducted by the State Auditor's  
23 Office. The results of this audit shall be reported, in writing,  
24 commencing on or before February 15, 1995, with respect to the  
25 audit for the 1993–94 fiscal year, and on or before January 15 of  
26 each year thereafter, with respect to the audit for the fiscal year  
27 ending on the previous June 30, to the appropriate policy and  
28 budget committees of the respective houses of the Legislature. The  
29 commission shall reimburse the State Auditor's Office for the costs  
30 of the audits beginning with the 1996–97 fiscal year.

31 (g) On or before January 1, 1994, the commission shall hire a  
32 minimum of four additional operating practices inspectors,  
33 exclusive of supervisory personnel, who are, or shall become by  
34 July 1, 1994, federally certified, for the purpose of enforcing  
35 compliance by railroads operating in this state with state and federal  
36 safety regulations.

37 (h) The commission, in performing its duties, shall limit the  
38 expenditure of funds for rail safety division purposes to those  
39 railroad corporation fees collected pursuant to subdivision (d). In  
40 no event, shall the commission fund railroad safety activities

1 utilizing funds from other commission accounts unrelated to  
2 railroad safety.

3 SEC. 27. Section 80270 of the Water Code is amended to read:

4 80270. The State Auditor's Office shall conduct a financial  
5 and performance audit of the department's implementation of this  
6 division. The audit shall be completed before December 31, 2001.

7 The office shall issue a final report on or before March 31, 2003.

8 SEC. 28. *No existing supplies, forms, insignias, signs, or logos*  
9 *shall be destroyed or changed as a result of changing the name of*  
10 *the Bureau of State Audits to the State Auditor's Office, and those*  
11 *materials shall continue to be used until exhausted or*  
12 *unservicable.*